THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.7760 OF 2006

DATED: APRIL, 2006.

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Between:

1. Madana Sudhakar and 3 others. … Petitioners

And

1. Madana Yadagiri and another. … Respondents

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WRIT PETITION NO.7760 OF 2006

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ORDER :

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The petitioners 1 to 3 claims to be the sons and the petitioner No.4 claims to be the wife of late M. Anjaiah. It is stated that 215 sq. yards of land situated at Gurramguda village, Saroornagar Mandal, fell to the share of late M. Anjaiah during his lifetime in an oral partition among the members of the joint family. Thereafter, a house was constructed in the said land in the year 1991. It is claimed that the petitioners herein succeeded to the said property and have been continuing in possession and enjoyment of the same after the death of M. Anjaiah. The said property was also mutated in the names of the petitioners on 12-7-2002.

It is pleaded that the 1st respondent herein who is the brother of late Anjaiah filed O.S.No.684 of 1993 in the Court of the Principal Junior Civil Judge, Rangareddy district against M. Anjaiah during his lifetime seeking partition of the joint family properties. The said suit was dismissed vide judgment dated 15-4-2002 accepting the plea of the defendants that there was prior partition. Thereafter, the 1st respondent herein filed O.S.No.1149 of 2004 seeking declaration of title and recovery of possession of the property in possession of the petitioners. The said suit is pending on the II-Addl. Senior Civil Judge, Rangareddy district. That apart, O.S.No.561 of 2006 filed by the petitioners in the Court of the II-Addl. Senior Civil Judge, Rangareddy district seeking declaration of title and perpetual injunction in respect of the said property is also pending in which the trial Court in I.A.No.664 of 2006 granted an interim order to maintain status quo on 23-3-2006.

While so, the officials of the 2nd respondent Bank along with an advocate commissioner appointed by the Metropolitan Magistrate in exercise of powers under Section 14 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act) came to the property in possession of the petitioners and attempted to dispossess them on the alleged consent given by 1st respondent for handing over the said property. Hence, this writ petition seeking a declaration that the action of the 2nd respondent Bank in seeking to dispossess the petitioners from the house in question is arbitrary and illegal.

It is primarily contended by the petitioners that the action of the 2nd respondent Bank in resorting to evict the petitioners purportedly under the provisions of the Securitisation Act without any notice to the petitioners is arbitrary and illegal. It is also alleged that the said property was clandestinely mortgaged by the 1st respondent, who had no right or title whatsoever, with the 2nd respondent Bank.

Having heard the learned Counsel for the petitioner and having regard to the material placed before this Court, it is clear that the petitioners themselves filed O.S.No.561 of 2006 seeking declaration of title in respect of the property in question and perpetual injunction restraining the defendants 1 and 2 from interfering with the said property. Admittedly, the 2nd respondent Bank is made a party to the said suit as 2nd defendant and the order of status quo said to have been passed in I.A.No.664 of 2006 is binding on the 2nd respondent Bank. A perusal of the averments in the plaint show that the said suit was filed on the same set of facts as pleaded in this writ petition. It is also clear from the material placed on record that the 2nd respondent Bank filed M.P.No.1561 of 2006 in the Court of the Chief Metropolitan Magistrate, Hyderabad under Section 14 of the Securitisation Act seeking assistance to take possession of the secured asset and by order dated 29-3-2006 an advocate commissioner was appointed to take physical possession of the property in question.

Thus, it is clear that the property in question is a secured asset in respect of which the notices under Sections 13 (2) as well as 13 (4) of the Securitisation Act were already issued. The petitioners also admit the fact that the said property was mortgaged with the 2nd respondent Bank. However, it is contended that the 1st respondent has no title or possession in respect of the said property and a mortgage was created misrepresenting the facts. The said issue requires to be decided in O.S.No.561 of 2006 pending between the same parties including the 2nd respondent Bank. In the circumstances, it is not open to the petitioners to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India

as a parallel remedy. At any rate, having availed the common law remedy for declaration of their title and having obtained an order of status quo and particularly having made the 2nd respondent as a party to the said proceedings, the present writ petition seeking a Mandamus restraining the defendants from interfering with the possession and enjoyment of the petitioners in respect of the suit schedule property is misconceived and nothing but abuse of process of law.

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It is also relevant to note that under Section 17 of the Securitisation Act the right of Appeal is available to any person aggrieved by any of the measures referred to in Sub-section (4) of Section 13 of the Securitisation Act, in which event the Debts Recovery Tribunal shall make the necessary enquiry and pass appropriate orders. No reason is forthcoming as to why the petitioners have not availed the said remedy.

Viewed from any angle, the Writ Petition is devoid of any merit and accordingly the same is dismissed. No costs.

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G. ROHINI, J.

Dt. –04-2006

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